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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CALVIN PEACE,

Defendant and Appellant.

A153623

(San Mateo County  
Super. Ct. No. 17SF009100)

**MEMORANDUM OPINION<sup>1</sup>**

Following his conviction for an *Estes* style robbery (Pen. Code, § 212.5, subd. (c); see *People v. Estes* (1983) 147 Cal.App.3d 23) based on what began as a shoplifting incident at a Target store, Calvin Peace was sentenced in 2018 to seven years in prison, consisting of the lower term of two years, enhanced by five years for a prior strike conviction (Pen. Code, § 667, subd. (a)(1)). He was ordered to pay \$370 in fines and fees, consisting of a \$300 restitution fund fine (Pen. Code, § 1202.4), a \$40 court operations assessment fee (Pen. Code, § 1465.8), and a \$30 criminal conviction assessment fee (Gov. Code, § 70373).

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<sup>1</sup> We resolve this case by memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1. (See also *People v. Garcia* (2002) 97 Cal.App.4th 847, 853–855.)

Peace now appeals his sentence, arguing that 1) under Senate Bill No. 1393 (2017–2018 Reg. Sess.) (Senate Bill 1393) the 5-year enhancement imposed on him is no longer mandatory (see Pen. Code, §§ 667, subd. (a) & 1385; Stats. 2018, ch. 1013), Senate Bill 1393 applies retroactively, and therefore the case should be remanded so that the trial court may consider whether it wishes to strike or dismiss the enhancement as a matter of discretion, and 2) the court imposed the \$370 in fines and fees on him without considering his claimed indigency in violation of *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*), and on remand, no such fines and fees may be imposed unless the court finds that he has the ability to pay them.

The Attorney General concedes that remand is appropriate so that the trial court may consider whether an exercise of discretion under Senate Bill 1393 is appropriate, and, although he points out that Peace failed to object to the imposition of fines and fees on grounds of lack of ability to pay, he takes the position that, since the case must be remanded anyway, it is appropriate for the court to consider the issue of inability to pay in light of *Dueñas* on remand.

### **DISPOSITION**

The sentence is vacated and the case is remanded for consideration of whether to strike or dismiss the 5-year enhancement charge under Senate Bill 1393 and for a determination of Peace's ability to pay fines and fees.

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STREETER, Acting P.J.

We concur:

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TUCHER, J.

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BROWN, J.

A153623/*People v. Peace*